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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ROOM ROOM

In the Matter of)
)
Amendment of Section 73.202(b))
FM Table of Allotments)
(Jefferson City, Cumberland Gap)
Elizabethton, Tennessee))

MM Docket No. 94-116
RM-8507

To: Chief, Policy and Rules Division

REPLY COMMENTS

JBD, Inc., licensee of WXJB(FM), Harrogate, Tennessee, and Country-Wide Broadcasters, Inc., licensee of WFXV(AM), Middlesboro, Kentucky by their undersigned counsel herewith submit their joint Reply Comments in opposition to the Commission's Notice of Proposed Rulemaking (DA 94-1060), released October 5, 1994, wherein the Commission proposed the substitution of Channel 256A for 257A at Jefferson City, Tennessee and the reallocation of substituted Channel 256A from Jefferson City to Cumberland Gap, Tennessee.

1. In its Notice of Proposed Rulemaking the Commission directed (at para. 4) the Petitioners, Eaton P. Govan, III. and Berton B. Cagle, Jr., to submit a gain/loss showing, demonstrating: (a) the areas and populations which would receive new service, (b) the areas and populations which would lose existing service and (c) the number of reception services currently available within the gain and loss areas. In their

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Comments, filed November 28, 1994, the Petitioners failed to submit the required gain/loss showing. Instead, they submitted only information reflecting: (a) the area and population encompassed within the current 60 dbu contour of WUSK(FM), (b) the area and population encompassed within the proposed 60 dbu contour of WUSK(FM), (c) the number of FM services currently providing 60 dbu or greater service to 50% or more of the area within the current 60 dbu contour of WUSK(FM), and (d) the number of FM services currently providing 60 dbu or greater service to 50% or more of the area within the proposed 60 dbu contour of WUSK(FM).

2. The information submitted by Petitioners was not responsive to the Commission's Notice of Proposed Rulemaking and is insufficient to establish the extent of the areas and populations which would either gain or lose service, as a result of Petitioners' proposal, much less to determine the availability of existing service to those residing within the gain and loss areas. ¹/ This failure to submit the required information should be deemed a failure of proof on the part of the Petitioners and should form a sufficient basis, standing alone, for denying their proposal.

1. Petitioners failed to provide any data, whatsoever, regarding the existing AM service in the areas in question.

3. In their Comments the Petitioners acknowledge that their proposal would result in an overall decrease in the population served by WUSK(FM) of over 40,000 persons. This would represent a thirty-nine percent (39%) decrease in the population served by the station. Yet, the Petitioners offer no evidence that their proposal would result in the provision of service to any currently unserved or underserved areas or populations and, indeed, acknowledge that the area that will be encompassed by WUSK(FM)'s 60 dbu contour, should their proposal be implemented, is already well served. Not only do these factors demonstrate that the proposal would not serve the public interest, as viewed from the perspective of the Commission's allocation criteria, but also seriously undermine Petitioners' contention that relocating the WUSK(FM) to Cumberland Gap would "[give] the station an opportunity for financial stability without intense competition." (See: NPR at para. 2), when by Petitioners' own admission the station's overall population coverage will be reduced by 39% and it will still face competition from 18 other FM stations (where it currently competes with only 17 FM stations). ²/

4. Furthermore, while their proposal would permit the upgrade of WUSJ(FM), Elizabethton, Tennessee, the Petitioners report that the population encompassed with WUSJ(FM)'s 60 dbu

2. As reflected in the Comments of JBD, Inc. and Country-Wide Broadcasters, Inc. (at paras. 3-4), if reallocated to Cumberland Gap, WUSK(FM) would also face competition from at least 5 AM facilities.

contour would only increase by some 90,000 persons, all of whom are also currently well served. Thus, not only have Petitioners failed to provide the required gain/loss showing, they have also failed to advance any countervailing public interest benefits to offset the loss of service to Jefferson City, Tennessee, including the loss of that community's only nighttime transmission service. Accordingly, their proposal should be rejected.

WHEREFORE, for the foregoing reasons, the Commission should not amend Section 73.202 of its Rules by substituting Channel 256A for 257A at Jefferson City, Tennessee, or by reallocating substituted Channel 256A from Jefferson City to Cumberland Gap, Tennessee, and should terminate this proceeding without making any changes to the FM Table of Allotments.

Respectfully Submitted,

JBD, INC.
and
COUNTRY-WIDE BROADCASTERS, INC.

By: 

Timothy K. Brady
Their Attorney

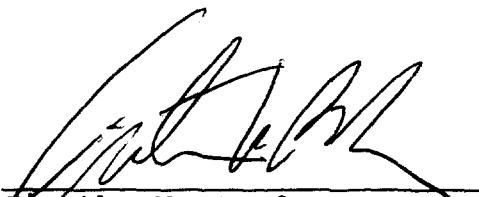
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December 13, 1994

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have, this 13th
day of December, 1994, served a copy of the foregoing Reply
Comments by First Class mail, postage prepaid upon the following:

Eaton P. Govan, III. and Berton B. Cagle, Jr.
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Timothy K. Brady